

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No.7809 of 2000
With
SPECIAL CIVIL APPLICATION No.12972 of 2000
TO
SPECIAL CIVIL APPLICATION No.13017 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge?

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PAWAR RAMESHBHAI ARJUNSINGH & 45 - Petitioner(s)
Versus
ADMINISTRATOR, & 3 - Respondent(s)

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Appearance :

MR JITENDRA MALKAN for Petitioner(s) : 1 - 46.

NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

MS SEJAL K MANDAVIA for Respondent(s) : 1 - 2.

RULE SERVED BY DS for Respondent(s) : 2,

MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/12/2007

ORAL JUDGMENT

1. As common question of facts and law arise in these group of petitions, they are being disposed of by this common judgment and order.

2. In all these petitions, under Article 226 of the Constitution of India, the respective petitioners who are residing at Village – Bholav, District – Bharuch have prayed for an appropriate writ, direction and order to quash and set aside the respective demolition / eviction notice issued by respondent No.1. All these petitioners are having their hutments situated in Village – Bholav, in a part of Revenue Survey No.93 near one Protins and Food Company. As they were in illegal occupation and possession of said survey; that they have encroached upon Government land, Bholav Gram Panchayat, by impugned notice called upon the respective petitioners to remove unauthorized encroachment. Being aggrieved and dissatisfied with the said notices, the respective petitions have preferred the present petitions, under Article 226 of the Constitution of India for the aforesaid relief.

3. Mr.Malkan, learned Advocate appearing on

behalf of the respective petitioners has submitted that impugned notices are issued by respondent no.1 without following due procedure as required to be followed under Sub-section (2) of Section 105 of the Gujarat Panchayat Act ('the Panchayat Act' for short), more particularly proviso to Sub-section (2) to Section 105. It is submitted that land in question is vested in the State Government and therefore, before issuing impugned notices, permission of the Collector or any authorized by him in that behalf is required to be first obtained and in the present case, no such permission of the Collector has been obtained by the Panchayat before issuance of the impugned notices. It is submitted that obtaining the permission of the Collector is *sine qua non* and condition precedent. Therefore, it is requested to quash and set aside the impugned notices. No other submission have been made by the learned Advocate appearing on behalf of the petitioners.

4. An affidavit in reply is filed on behalf of the respondent – Panchayat and it is pointed out in the reply that Government has given Revenue Survey

No.93 to the Panchayat for the purpose of constructing lake. However, the petitioners have made encroachment over the said land. Though it is denied that the land in question is Government land vested in the Collector, Bharuch, Ms.Mandavia, learned Advocate appearing on behalf of the Panchayat has submitted that the land in question has been vested in the Government and same has been given to the Panchayat for specific purpose of constructing lake and administration. Thus, factum of land vested in the Government is not denied by the Panchayat. Even, Mr.Dipen Desai, learned A.G.P., has also submitted that the land in question has been vested in the Collector, Bharuch and same has been given to the respondent – Panchayat for specific purpose of constructing lake and for administration. It is submitted by Ms.Mandavia, learned Advocate appearing on behalf of the Panchayat that as all the petitioners are tress-passers and they have encroached upon the Government land which is given to the Panchayat for constructing lake and for administration, they have no right to continue on the land in question and therefore, the action of the

respondent – Panchayat in issuing notice for removing the encroachment is legal, just and proper. Therefore, it is requested to dismiss all the petitions.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. From the affidavit-in-reply of the Panchayat; submissions and contentions on behalf of the respective parties, it cannot be disputed that land in question i.e. Revenue Survey No.93 is not vested in the Government / Collector, Bharuch and has been given to the Panchayat for specific purpose of constructing lake and for administration. Thus, land in question is not absolutely vested in the Panchayat. Section 105 of the Panchayat Act confers power / authority upon the Panchayat to remove encroachment on any land other than being private property and may remove unauthorized obstruction / construction of the like nature in any open site not being private property, whether such site is vested in the Panchayat or not. However, as per proviso to

Sub-section (2) to Section 105 if the site be vested in the State Government, permission of the Collector or any authorized Officer in this behalf shall have to be obtained. Though it is the case on behalf of the Panchayat that impugned notices have been issued as per the direction of the Collector, Bharuch and not only that even subsequently also various instructions / directions were given by the Collector, Bharuch to the Panchayat to remove unauthorized obstruction and encroachment made by the petitioners and others. However, nothing is on record to show that any permission has been obtained from the Collector in this behalf. Under the circumstances, impugned notices can be said to have been issued without following due procedure as required under Sub-section (2) of Section 105 of the Panchayat Act. Hence, impugned notices are required to be quashed and set aside and the matters are to be remanded to the Panchayat with a direction to the Panchayat to follow procedure for removing unauthorized obstruction / encroachment made by the petitioners after following due procedure under Sub-section (2) of Section 105 of the Panchayat Act. It

is not in dispute that all the petitioners are in unauthorized occupation and have encroached upon the land in question. However, it is the case on behalf of the petitioners that they have made representation to the Collector, Bharuch for regularization. Be that as it may, fact remains that before issuing impugned notices, procedure required under Sub-section (2) of Section 105 has not been followed and as stated above, the matters are to be remanded to the Panchayat.

7. Under the circumstances and without expressing any opinion on merits of the case, all the petitions succeed in part. Impugned notices issued by respondent No.1 – Panchayat are hereby quashed and set aside. The matters are remanded to respondent No.1 – Panchayat for issuing fresh notices as contemplated under Section 105 of the Panchayat Act after following due procedure as required to be followed under Sub-Section (2) of Section 105 meaning thereby obtaining prior permission of the Collector, Bharuch in this regard. Respondent No.1 – Panchayat shall take permission of the Collector, Bharuch as

contemplated in proviso to Sub-section (2) of Section 105 within a period of three weeks from today and in turn the Collector, Bharuch shall consider the same and communicate his decision to respondent No.1-Panchayat within a period of four weeks thereafter. The Panchayat shall initiate appropriate proceedings / issue appropriate notices on the basis of the permission granted by the Collector, Bharuch in accordance with the law and more particularly Section 105 of the Gujarat Panchayat Act within a period of four weeks thereafter. Until then, all concerned inclusive of the petitioners are directed to maintain status-quo. Rule is made absolute to the aforesaid extent in each of the petitions. There shall be no order as to costs.

[M.R.Shah, J.]

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